

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DRYCLEANER ENVIRONMENTAL RESPONSE PROGRAM

Extensions/Exemptions for Implementing Best Management Practices

**POLICY**

In accordance with Rule 1200-1-17-.04(5) new facilities initially registering with DCERP, after October 15, 1997, must be in compliance with Class 1 and Class 2 Best Management Practices. In accordance with Rule 1200-1-17-.04(3)(a)5 the Certified Environmental Drycleaner (CED) Best Management Practice became effective on October 15, 1998. Rule 1200-1-17-.04(6)(a) allows DCERP to grant an exemption or extend the deadline for a facility to comply with a BMP.

*Rule 1200-1-17-.04(5) "prior to initial registration with the DCERP, after the effective date of these regulations drycleaning facilities and in-state wholesale distribution facilities shall provide certification that all Class 1 BMPs and Class 2 BMPs have been met. A facility inspection may be required for the purpose of ensuring compliance. The inspection shall be done according to a format determined by the Department."*

*Rule 1200-1-17-.04(3)(a)5 "effective one year from the effective date of these rules, each drycleaning facility shall be staffed by at least one person who is a Certified Environmental Drycleaner (CED), as certified by the International Fabricare Institute, or has a certification deemed equivalent by the Board upon petition by either the certifying institution or the operator seeking to use an alternative certification to meet this requirement. In the event of termination of employment or loss of certification by the CED the facility has six months to replace the CED."*

*Rule 1200-1-17-.04(6)(a) "for good cause shown, except where there is an unreasonable threat to human health and the environment, the Department may grant an exemption or extend the deadline for a facility to comply with a BMP under this section for a definite period of time."*

The following policy is applicable for facilities initially registering with DCERP after July 26, 2000, who are not staffed by a Certified Environmental Drycleaner. **This policy is intended solely for registration purposes and not entry into the program and access to the fund for reimbursement of environmental response activities.**

**CED EXTENSION**

- A. DCERP may grant an extension for compliance with the Certified Environmental Drycleaner requirement under the following conditions:
1. The facility owner or operator submits a written request for an extension.
  2. The facility owner or operator submits a signed and notarized BMP certification that all other program BMPs have been implemented. If drycleaning operations have not begun at the facility then the facility owner or operator must submit a signed and notarized BMP certification that BMPs will be implemented prior to commencing operations at the facility.
  3. The owner or operator shall submit appropriate documentation supporting attendance at all available exams including any prior to the request for an extension.
  4. The extension (a Certificate of Registration issued for a temporary period) shall be granted not to exceed 45 days following the next available CED exam. An additional extension, if any, must be approved by the Drycleaner Environmental Response Board.
  5. The owner or operator should insure attendance, by the candidate, at any exam preparation workshop(s) that may be available. The owner or operator shall submit appropriate documentation verifying attendance at such workshop(s).
  6. The owner or operator shall notify any prospective purchaser of the extension to obtain a CED and the expiration date of such extension. The extension and extension deadline shall be clearly identified in the sales agreement. Within 30 days of a change in ownership the prior owner or operator (seller) shall submit in writing to DCERP appropriate documentation supporting the extension notification to the new owner (purchaser).

7. A new owner or operator who purchases a drycleaning facility which has been granted an extension to comply with the CED requirement will be allowed to operate under the existing extension provided at least one exam is available. If an exam is not available between the purchase date and the end of the extension deadline, DCERP may grant an extension not to exceed 45 days following the next available CED exam date.
8. Failure to submit appropriate documentation that the facility is staffed by a CED at the end of the extension period will result in the withholding or non-renewal of the Certificate of Registration.
9. In order to maintain fund eligibility, within 60 days after acquiring a Certified Environmental Drycleaner, the facility should conduct a Facility Inspection to verify compliance with all applicable BMPs. If the FI report identifies any BMP deficiencies, a Certificate of Registration will not be issued until the deficiencies are cured as reported in any subsequent FI report which would not be fund reimbursable. Based on the results of the FI, DCERP may require that a Prioritization Investigation and/or a Solvent Impact Assessment be conducted to determine if the site has been impacted by drycleaning solvent. In accordance with Rule 1200-1-17(7)(a), if solvent impacts are identified where an operator failed to adopt, install or maintain a BMP and such action or omission significantly caused or contributed to a release, or a failure to contain said release, the operator will not be eligible for reimbursement of response costs. An impacted third party may remain eligible for reimbursement of response costs in accordance with Rule 1200-1-17-.05(4)(b).
10. A facility owner or operator who fails to staff the facility with a CED and whose Certificate of Registration is withheld or not renewed and who relocates to a “new” location will not be issued a Certificate of Registration at the new facility/location unless it is staffed by a CED.

#### CED EXEMPTION

B. DCERP may grant an exemption for compliance with the Certified Environmental Drycleaner requirement under the following conditions:

1. The facility owner or operator has completed steps A-1 through A-4 above.
2. The facility owner or operator has been notified at the end of the extension period that the Certificate of Registration will be withheld or not renewed unless, the facility is staffed by a CED or an exemption is granted.
3. The facility owner or operator submits a written request for an exemption.
4. The facility owner or operator submits a notarized statement, to DCERP and the property owner(s), that the facility has failed to implement applicable Best Management Practices.
5. In order to maintain fund eligibility, within 60 days after acquiring a Certified Environmental Drycleaner, the facility shall conduct a Facility Inspection to verify compliance with all applicable BMPs. If the FI report identifies any BMP deficiencies, a Certificate of Registration will not be issued until the deficiencies are cured as reported in any subsequent FI report which would not be fund reimbursable. Based on the results of the FI, DCERP may require that a Prioritization Investigation and/or a Solvent Impact Assessment be conducted to determine if the site has been impacted by drycleaning solvent. In accordance with Rule 1200-1-17(7)(a), if solvent impacts are identified where an operator failed to adopt, install or maintain a BMP and such action or omission significantly caused or contributed to a release, or a failure to contain said release, the operator will not be eligible for reimbursement of response costs. An impacted third party may remain eligible for reimbursement of response costs in accordance with Rule 1200-1-17-.05(4)(b).
6. The Board approves the request for an exemption.

#### Right to revoke/withhold a Certificate of Registration during the extension or exemption period.

Per Rule 1200-1-17-.03(5)(a) DCERP “may revoke a facility’s Certificate of Registration or withhold re-issuance, due to violations of the Act or any regulations promulgated pursuant to the Act that significantly cause or contribute to a release or a failure to contain a release.” In addition, an operator who fails to adopt, install, or maintain a BMP which causes or contributes to a release or failure to contain the release will not be eligible under the program for reimbursement of response costs.

Therefore, regardless of any extension or exemption that may have been granted, DCERP can revoke or withhold re-issuance of a Certificate of Registration and deny access to the fund in accordance with the rules.

### **NOTICE OF RIGHTS**

The applicant is hereby advised that it may appeal the termination of the Certificate of Registration issued for a temporary period. The applicant can request a hearing before the Drycleaner Environmental Response Board in order to request an additional extension or to request an exemption for compliance with the Certified Environmental Drycleaner (CED) best management practice in the rules. During the period between a request for an appeal and the hearing before the Board the applicant will be allowed to continue operating the drycleaning facility without being subject to penalties for operating even though the Certificate of Registration has expired.

**The request must be filed prior to the expiration of the extension period (45 days following the next available CED exam date) or the applicant will be deemed to have consented and it will not be subject to review.** The applicant, in a hearing before the Board, has the right to be represented by counsel, to submit responsive pleadings and other papers, to subpoena witnesses, and to present evidence and arguments on all issues involved. All proceedings before the Tennessee Drycleaner Environmental Response Board shall be conducted in accordance with the Uniform Administrative Procedures Act, T.C.A. 4-5-101 et. seq. If the applicant is unable to afford legal representation, free or low-cost legal assistance may be available. For additional information, contact the local bar association.

Any correspondence should be sent to Steve Goins, Program Manager, Drycleaner Environmental Response Program, Tennessee Department of Environment and Conservation, 4<sup>th</sup> Floor L&C Annex, 401 Church Street, Nashville, Tennessee 37243-1538, Telephone (615) 532-8599.

Facility Name \_\_\_\_\_ County \_\_\_\_\_

Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Official Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date